



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/555,276	11/02/2005	Richard Jeffery	36-1926	4593
23117 7590 12/11/2007 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			EXAMINER ELPENORD, CANDAL	
			ART UNIT 2616	PAPER NUMBER
			MAIL DATE 12/11/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/555,276	JEFFERY ET AL.	
	Examiner	Art Unit	
	Candal Elpenord	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>23 January 2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 1-2, 9-11, 18** are rejected under 35 U.S.C. 102(e) as being anticipated by Kenner et al (US 2003/0145007 A1).

Regarding claim 1, Kenner et al. discloses a system (fig. 1, Wide area network system, recited in paragraph 0044) for selecting a preferred data provider ("user wishes to access a content provider", recited in paragraph 0047) from a plurality of data providers (fig. 1 Service Providers 14 and 18, recited in paragraph 0045), the system (fig. 1, Wide area network system, recited in paragraph 0044) comprising: means for receiving a request ("query the content provider through request message", recited in paragraph 0047) for data from a client (fig. 1, User Terminal 12, recited in paragraph 0047); means for receiving client identification data ("received of delivery site file", recited in paragraph 0054) from said client (fig. 1, User Terminal 12, recited in paragraph 0047); means for identifying ("identity of delivery site and "download of delivery site file", recited in paragraphs 0035 and 0037) a plurality of data providers (fig. 1 Service Providers 14 and 18, recited in paragraph 0045) capable of providing data

Art Unit: 2616

("providing certain kind of content", recited in paragraph 0046) to said client (fig. 1, User Terminal 12, recited in paragraph 0047); means for providing ("retrieving a video clip for the user", recited in paragraph 0037) said client identification data ("particular item or video clip while browsing the web", recited in paragraph 0035) to said data providers (fig. 1 Service Providers 14 and 18, recited in paragraph 0045) ; means for instructing ("content providers can be told where to", recited in paragraph 0039) said data providers (fig. 1 Service Providers 14 and 18, recited in paragraph 0045) to perform the steps of:

(i) sending a test signal ("ping test", recited in paragraph 0075) to said client (fig. 1, User Terminal 12, recited in paragraph 0047); (ii) receiving a return signal ("reverse traceroute message", recited in paragraph 0077) from said client (fig. 1, User Terminal 12, recited in paragraph 0047); (iii) obtaining a measure of the elapsed time ("travel round trip time from user terminal to remote server", recited in paragraph 0075, "how long each hop takes", recited in paragraph 0076) between the sending of the test signal ("ping test", recited in paragraph 0075) and the receipt of the return signal ("reverse traceroute message", recited in paragraph 0077); (iv) making a signal indicative of the elapsed time ("travel round trip time from user terminal to remote server", recited in paragraph 0075, "how long each hop takes", recited in paragraph 0076) available to the system (fig. 1, Delivery Site 28, 26, recited in paragraph 0048); and v) making a signal indicative ("providing the test results to service provider", recited in paragraph 0038) of their remaining capacity ("addition of capacity", recited in paragraph 0038) available to the system (fig. 1, Delivery Site 28, 26, recited in paragraph 0048); means for receiving elapsed time signals ("reverse traceroute message", recited in paragraph 0077) and

Art Unit: 2616

remaining capacity signals ("capacity query-transmission capacity and average load", recited in paragraph 0084) from said data providers (fig. 1 Service Providers 14 and 18, recited in paragraph 0045) ; means for selecting ("influence the decision to choose a particular service provider", recited in paragraph 0078) preferred data provider (fig. 1 Service Providers 14 and 18, recited in paragraph 0045) on the basis of said signals ("traceroute and reverse traceroute", recited in paragraph 0078) ; and means for providing information ("network capabilities", recited in paragraph 0036-0037) relating to the identity ("identity of the chosen", recited in paragraphs 0036-0037) of said preferred data provider (fig. 1 Service Providers 14 and 18, recited in paragraph 0045) to said client (fig. 1, User Terminal 12, recited in paragraph 0047) .

Regarding claim 2, a system (fig. 1, Wide area network system, recited in paragraph 0044), wherein the means ("allocation of requests", recited in paragraph 0051) for receiving a request for data ("query the content provider through request message", recited in paragraph 0047) comprises means for receiving a request ("query the content provider through request message", recited in paragraph 0047) for one or more specific items ("video clip", recited in paragraph 0037, "sports highlights and business news", recited in paragraph 0046-0047).

Regarding claim 9, a system (fig. 1, Wide area network system, recited in paragraph 0044), comprising means capable of selecting ("selection additional delivery sites", recited in abstract, lines 6-11) more than one ("first content provider of sports and highlights" and second provider of business news", recited in paragraph 0046-0047) preferred data provider (fig. 1 Service Providers 14 and 18, recited in paragraph 0045)

according to predetermined criteria ("based on analysis of network performance", recited in abstract, lines 6-11), and means for providing information ("network capabilities", recited in paragraph 0036-0037) relating to the identity ("identity of the chosen", recited in paragraphs 0036-0037) of each preferred data provide (fig. 1 Service Providers 14 and 18, recited in paragraph 0045) to the client (fig. 1, User Terminal 12, recited in paragraph 0047).

Regarding claim 10, Kenner et al. discloses a method for selecting ("system and method that facilitates a selection", recited in abstract, lines 1-11) a preferred data provider (fig. 1 Service Providers 14, recited in paragraph 0045) from a plurality of data providers (fig. 1 Service Providers 14 and 18, recited in paragraph 0045), the method ("system and method that facilitates a selection", recited in abstract, lines 1-11) comprising the steps of: receiving a request ("query the content provider through request message", recited in paragraph 0047) for data from a client (fig. 1, User Terminal 12, recited in paragraph 0047) identification data ("received of delivery site file", recited in paragraph 0054) from said client (fig. 1, User Terminal 12, recited in paragraph 0047); identifying ("identity of delivery site and "download of delivery site file", recited in paragraphs 0035 and 0037) a plurality of data providers (fig. 1 Service Providers 14 and 18, recited in paragraph 0045) capable of providing data ("providing certain kind of content", recited in paragraph 0046) to said client (fig. 1, User Terminal 12, recited in paragraph 0047); providing said client identification data ("particular item or ,video clip while browsing the web", recited in paragraph 0035) to said data providers (fig. 1 Service Providers 14 and 18, recited in paragraph 0045); instructing ("content

Art Unit: 2616

providers can be told where to", recited in paragraph 0039) said data providers (fig. 1 Service Providers 14 and 18, recited in paragraph 0045) to perform the steps of: (i) sending a test signal ("ping test", recited in paragraph 0075) to said client (fig. 1, User Terminal 12, recited in paragraph 0047) ; (ii) receiving a return signal ("reverse traceroute message", recited in paragraph 0077) from said client (fig. 1, User Terminal 12, recited in paragraph 0047); (iii) obtaining a measure of the elapsed time ("travel round trip time from user terminal to remote server", recited in paragraph 0075, "how long each hop takes", recited in paragraph 0076) between the sending of the test signal ("ping test", recited in paragraph 0075) and the receipt of the return signal ("reverse traceroute message", recited in paragraph 0077); (iv) making a signal indicative ("providing the test results to service provider", recited in paragraph 0038) of the elapsed time ("elapsed time", recited in col. 10, lines 44-49 available to the system (fig. 1, Delivery Site 28, 26, recited in paragraph 0048), and (v) making a signal indicative ("providing the test results to service provider", recited in paragraph 0038) of their remaining capacity ("capacity query-transmission capacity and average load", recited in paragraph 0084) available to the system (fig. 1, Delivery Site 28, 26, recited in paragraph 0048); receiving elapsed time signals ("reverse traceroute message", recited in paragraph 0077) and remaining capacity signals ("capacity query-transmission capacity and average load", recited in paragraph 0084) from said data providers (fig. 1 Service Providers 14 and 18, recited in paragraph 0045); selecting ("influence the decision to choose a particular service provider", recited in paragraph 0078) a preferred data provider (fig. 1 Service Providers 14 and 18, recited in paragraph 0045) on the

basis of said signal ("traceroute and reverse traceroute messages", recited in paragraph 0078) s; and providing information ("network capabilities", recited in paragraph 0036-0037) relating to the identity ("identity of the chosen", recited in paragraphs 0036-0037) of said preferred data provider (fig. 1 Service Providers 14, recited in paragraph 0045) to said client (fig. 1, User Terminal 12, recited in paragraph 0047).

Regarding claim 11, Kenner et al. discloses a method ("system and method that facilitates a selection", recited in abstract, lines 1-11), wherein the step ("allocation of requests", recited in paragraph 0051) of receiving a request for data ("query the content provider through request message", recited in paragraph 0047) comprises receiving a request ("query the content provider through request message", recited in paragraph 0047) for one or more specific items ("video clip", recited in paragraph 0037, "sports highlights and business news", recited in paragraph 0046-0047).

Regarding claim 18, Kenner et al. discloses a method ("system and method that facilitates a selection", recited in abstract, lines 1-11), wherein more than one ("first content provider of sports and highlights" and second provider of business news", recited in paragraph 0046-0047) preferred data provider (fig. 1 Service Providers 14, recited in paragraph 0045) may be selected according to predetermined criteria ("based on analysis of network performance", recited in abstract, lines 6-11), and wherein information relating to the identity ("identity of the chosen", recited in paragraphs 0036-0037) of each preferred data provider (fig. 1 Service Providers 14 and 18, recited in paragraph 0045) may be provided to the client (fig. 1, User Terminal 12, recited in paragraph 0047).

Art Unit: 2616

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. **Claims 3, 7-8, 12, 16-17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenner et al (US 2003/0145007 A1) in view of Mineo et al (US 2001/0056493 A1).

Art Unit: 2616

Regarding claim 3, Kenner discloses the system wherein the means for identifying data provider as recited in above paragraph, **regarding claim 7**, the system wherein the means for providing information relating to the identity of the preferred data provider as recited in above paragraph, **regarding claim 8**, the system, wherein the , wherein the means for providing information relating to the identity of the preferred data provider as recited in above paragraph.

Kenner et al. is however silent with respect to the following features: **regarding claim 3**, comprises means for searching for data providers capable of providing the specific item or items requested, **regarding claim 7**, providing the information on a website, **regarding claim 8**, providing the uniform Resource Locator of the preferred data provider.

However, Mineo et al. in a similar field of endeavor discloses the following features: **regarding claim 3**, means for searching (fig. 6, Search D503, recited in paragraph 0049) for data providers (fig. 1, Service Server 401, recited in paragraph 0038) capable of providing the specific item or items requested (fig. 6, Products lists D 502, recited in paragraph 0049), **regarding claim 7**, providing the information (fig. 6, Products lists D 502, recited in paragraph 0049) on a website ("address of the service server, recited in paragraph 0068, "URLs of the WWW", recited in paragraph 0077) **regarding claim 8**, providing the uniform Resource Locator (URLs of the WWW", recited in paragraph 0077) of the preferred data provider (fig. 1, Service Server 401, recited in paragraph 0038) . Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the features of Kenner et al.

Art Unit: 2616

by using features as taught by Mineo et al. in order to facilitate the selection of a plurality of service servers (See paragraphs 0007-0008 for motivation).

7. **Claims 4-6, 13-15** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenner et al (US 2003/0145007 A1) in view of Yahagi et al (US 2002/0102978 A1).

Regarding claims 4-6, Kenner et al. discloses the system, wherein the selecting means is arranged to select a preferred data provider from data providers, wherein the means for instructing said data providers comprises means for instructing the data providers to make available to the system a signal indicative of their remaining bandwidth, the system, wherein the means for instructing said data providers is a means remote from the client as recited in above paragraphs.

Kenner et al. discloses all the claimed limitation with the exception of being silent with respect to the following features: **regarding claim 4**, select a preferred data provider from data providers having a remaining capacity above a predetermined threshold, **regarding claim 6**, wherein the means for instructing said data providers is a means remote from the client.

However, Yahagi et al. in a similar field of endeavor discloses the following features: **regarding claim 4**, select a preferred data provider ("allowing a user to select one of the networks based on response signals", recited in paragraph from data providers (fig. 1, different service providers", recited in paragraph 0024) having a remaining capacity above a predetermined threshold ("congestion level below a predefined threshold", recited in paragraph 0013), **regarding claim 5**, means for

Art Unit: 2616

instructing ("directing the wireless interface", recited in paragraph 0025) the data providers (fig. 1, different service providers", recited in paragraph 0024) to make available to the system a signal indicative of their remaining bandwidth ("traffic handling capacity and traffic level", recited in paragraphs 0027-0028), **regarding claim 6**, wherein the means for instructing ("directing the wireless interface", recited in paragraph 0025) said data providers (fig. 1, different service providers", recited in paragraph 0024) is a means remote (fig. 1, Wireless network and wireless terminal, recited in paragraph 0024-0025) from the client (fig. 1, User Terminal 10, recited in paragraph 0024). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the features of Kenner et al. by using features as taught by Yahagi et al. in order to differential services based on response signals (See paragraphs 0006-0008 for motivation).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Garg et al (US 2004/0032876 A1), and Cheng et al (US 2002/0067694 A1) are cited to show methods and systems related to the claimed invention.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Candal Elpenord whose telephone number is (571) 270-3123. The examiner can normally be reached on Monday through Friday 7:30AM to 5:00PM EST.

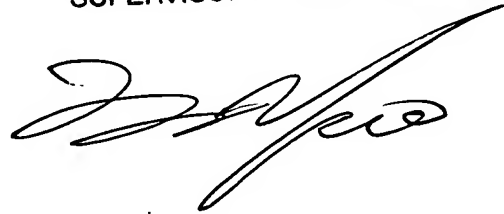
Art Unit: 2616

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kwang Bin Yao can be reached on (571) 272-3182. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CE

KWANG BIN YAO
SUPERVISORY PATENT EXAMINER

A handwritten signature in black ink, appearing to read 'K. Bin Yao', is written over the printed name and title of the examiner.